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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
Administration of the North American Numbering Plan	)	CC Docket No. 92-237

To: The Commission

AMERITECH COMMENTS ON
PETITIONS FOR RECONSIDERATION

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SUMMARY

The Commission should clarify or reconsider portions of its *Second Report and Order* so that its implementation of the dialing parity requirements of the Telecommunications Act of 1996 is consistent with the statutory language and congressional intent. In particular, the Commission should clarify that local exchange carriers ("LECs") need not conduct balloting or block existing intraLATA toll customers who do not select another carrier. Ameritech submits that the Commission clearly did not intend to require, on a nationwide basis, either balloting or blocking of existing customers who do not affirmatively make a new toll carrier selection. Such a requirement would cause unnecessary confusion for consumers and usurp the state commissions' authority over intraLATA toll carrier selection procedures.

In addition, the Commission should reject attempts by certain parties to warehouse central office (i.e., NXX) codes in connection with area code overlay plans. These parties' demand for multiple NXX code set-asides for potential future use at the very time when there is a shortage of available codes in an area is contrary to the public interest. In fact, the Commission should hold that the set-aside of one NXX code per carrier is not required where such a requirement inhibits the ability of state commissions to implement an orderly area code relief plan.

The Commission also should clarify or reconsider several aspects of its network change disclosure requirements. In particular, the Commission should clarify that the disclosure requirement is limited to high level system and service changes, not day-to-day network maintenance and provisioning activities. Further, the Commission should

eliminate the ability of competitors to delay unnecessarily network changes that benefit consumers. To that end, the Commission should eliminate the automatic and indefinite tolling of the public notice period (and thus the effective date of the change) in cases where the incumbent LEC and a new entrant are negotiating the terms of a nondisclosure agreement. In addition, the Commission should simplify and streamline its short term notice procedures governing implementation of network changes.

Moreover, the Commission should reconsider its decision to allocate the cost of number administration to telecommunications carriers based on net telecommunications revenues. Basing the allocation of number administration costs instead on gross retail telecommunications revenues would avoid discriminating against facilities-based carriers and preclude double contribution by carrier-purchasers of wholesale telecommunications services.

Finally, to the extent there is any ambiguity regarding the Commission's position, the Commission should clarify that a LEC is not required to transfer its directory assistance databases to a requesting carrier. The Commission's Rules are very specific on what is required with respect to directory assistance, and database transfer is not a requirement.

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To: The Commission

AMERITECH COMMENTS ON
PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, Ameritech submits these comments on petitions for reconsideration filed in connection with the *Second Report and Order* issued in the above-captioned docket.

I. The Commission Should Clarify That LECs Need Not Conduct Balloting or Block Existing IntraLATA Toll Customers Who Do Not Select A Carrier

Ameritech agrees with USTA and GTE that local exchange carriers ("LECs") need not conduct balloting or block existing intraLATA toll customers until they make a

preferred intraLATA carrier ("PIC") toll selection.[1] However, Ameritech does not believe that there is any ambiguity in the Commission's position on this point -- the Commission clearly did not envision imposing, on a nationwide basis, either balloting or blocking of existing customers who do not affirmatively make a selection. Moreover, as the Commission has recognized, matters regarding customer education and consumer notification are best left to the states. To the extent there is any doubt regarding the Commission's position, the Commission should clarify that it did not intend to require either balloting or blocking of existing intraLATA toll customers until they elect to make a change.

Ameritech believes that the Commission's Rules do not contemplate blocking of intraLATA toll calls for existing customers who do not make a new intraLATA toll carrier selection. Such an interpretation would cause consumers unnecessary confusion. As several parties pointed out in their petitions, the Commission's statement in the *Second Report and Order* that dial-tone providers cannot automatically assign *new* customers to themselves or any other carriers supports this interpretation.[2] Further, by using the term "assign," the Commission evidenced its intent to limit the requirement to new customers (who must be assigned to an intraLATA toll carrier), and not to extend it

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1 USTA Petition at 8; GTE Petition at 5.

2 USTA Petition at 7-8; GTE Petition at 4-5.

to existing customers (who are already assigned to a particular intraLATA toll carrier and therefore would actually have to be reassigned).[3]

This interpretation is further supported by language in the *Second Report and Order* indicating that the carrier selection requirement was being imposed in order to "eliminate[ ] the possibility that a LEC could designate itself automatically as a *new* customer's intraLATA or intrastate toll carrier without notifying the customer of the existence of alternative carrier choices." (¶ 81) Since notice will be given to existing customers pursuant to state commission directives (¶ 80), there is no similar possibility of a LEC retaining an existing customer without adequate notice. Therefore, the Commission could only have intended that the rule against automatic assignment would be limited to new customers. If necessary, the Commission should amend the rule to make this point clear.

As a practical matter, a contrary interpretation of the Rule would effectively mandate, on a nationwide basis, the blocking of many customers' toll calls. Specifically, LECs would be required to block direct-dialed intraLATA toll calls for all of their existing customers who did not make a new selection, thereby relegating each customer to dialing an access code each time he or she wished to complete an intraLATA toll call. Such a process would produce the same type of customer confusion that would occur if customers were randomly assigned to toll carriers that they did not select (i.e., balloting).

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[3] *Second Report and Order* at ¶ 81. Henceforth, all references to the *Second Report and Order* will appear in the text according to the paragraph number.

That is one of the reasons why the Commission declined to impose nationwide balloting (¶ 80), and why numerous states have considered and ultimately rejected the use of balloting as a means of implementing intraLATA toll dialing parity.[4]

Moreover, the Commission's imposition of such a burdensome and unwieldy requirement would usurp state commission authority by nullifying well-founded state plans that were adopted after contested proceedings. The establishment of such a nation-wide requirement would be inconsistent with the Commission's express conclusion in the *Second Report and Order* that the states are "best positioned to determine the consumer education and carrier selection procedures that best meet the needs of consumers and telecommunications services providers in their states." (¶ 80) Thus, the Commission has no basis for disrupting existing intraLATA toll customers by imposing a blocking requirement.

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[4] Balloting for an intraLATA PIC selection is not required in Illinois, Michigan or Wisconsin for any exchange that has been converted to interLATA equal access. *See, e.g.*, MPSC Case No. U-10138, *Opinion and Order*, at 29-32 (Mar. 10, 1995). In Illinois, for example, the Illinois Commerce Commission's ("ICC") Staff opposed balloting arrangements on the basis that they "probably would increase customer confusion and could result in unintended and undesirable rate increases." Adoption of Rules Pertaining to Intramarket Service Area Presubscription and Changes in Dialing Arrangements Related to the Implementation of Such Presubscription, Dkt. No. 94-0048, *Interim Order*, at 31 (April 7, 1995). Further, virtually every interested party opposed balloting in Wisconsin, and therefore the Public Service Commission of Wisconsin made no specific finding on this issue.

II. The Commission Should Not Mandate Warehousing of NXX Codes in Connection With Area Code Overlay Plans

The Commission concluded that it will permit overlay plans for Number Plan Area ("NPA") code relief only when such plans include a provision making available to every existing telecommunications carrier authorized to provide telephone exchange, exchange access, or paging service in the affected area code (including new LECs) at least one central office (i.e., "NXX") code ninety days before the introduction of a new overlay NPA. (¶ 286) AT&T, MFS, and Teleport have asked the Commission to expand this requirement to set aside more than one NXX code per carrier.[5] In fact, expanding the number of NXX codes held in reserve for potential future use is neither administratively feasible nor in the public interest.[6]

Reserving NXX codes for potential future use at the very time when there is a shortage of codes available in an NPA would not be good public policy. In fact, since NPA overlays are performed when the existing supply of NXX codes in an NPA is about to be exhausted, setting aside a greater number of NXX codes for potential future use at such a time may mean that a carrier with a valid current need may be denied a code. This could be particularly detrimental to new LECs that are already in business and growing quickly, because they are most likely to have an immediate need for additional

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5 AT&T Petition at 7; MFS Petition at 8-9; Teleport Petition at 7.

6 While Ameritech does not intend to propose overlays in areas where it is the number administrator, it does wish to keep this option available in the event of an emergency, and it is concerned that, as a practical matter, adoption of these proposals will foreclose adoption of overlays.

NXX codes. Further, it is likely that, in some cases, a multiple NXX code set-aside will not be feasible since the remaining supply of codes may not even be sufficient to set aside one code per telecommunications carrier prior to the area code overlay.

The Commission should also recognize that there are situations where the setting aside of even one NXX code per carrier should not be required. The unintended adverse consequences of the one-code-per-carrier rule are discussed in detail in the petitions for reconsideration of the Pennsylvania Public Utilities Commission, USTA, NYNEX, and BellSouth, each of which asks the Commission to reconsider the rule.[7] Ameritech agrees with these parties that the one-code-per-carrier rule (1) works against code conservation by accelerating the need for area code relief, and (2) inhibits the ability of state commissions to implement an orderly NPA relief plan, since the industry will not be able to determine how many carriers will claim an NXX code ninety days prior to implementation of the plan. The only feasible mechanism for ensuring that each telecommunications carrier has at least one NXX code is to reserve more codes than are likely to be needed, thereby further reducing the supply of codes available to meet current demand. At a minimum, the Commission should not exacerbate the problem of NXX code shortages by expanding the one-code-per-carrier requirement.

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[7] Pennsylvania PUC Petition at 5-6; USTA Petition at 9-10; NYNEX Petition at 11-12; BellSouth Petition at 8-9.

III. The Commission Should Reconsider the Scope of Its Network Disclosure Requirements

A. The Commission Should Clarify That the Network Disclosure Requirement is Limited to High Level System and Service Interface Changes

Ameritech agrees that the Commission should clarify its rules to make clear that the network disclosure requirement does not cover day-to-day network maintenance and provisioning activities. Including such routine activities, as NYNEX stated, "could jeopardize network reliability and bring service provisioning to its knees."[8] The statute requires, as should the Commission's Rules, only the disclosure of high level system and service interface changes.[9]

The present language of the Rule (§ 51.325(a)(2)) could be interpreted to include almost every activity undertaken by a LEC that is allocated to regulated operations under the Commission's Part 64 Rules, because any such activities could theoretically "affect the incumbent LEC's interoperability with other service providers." For example, it

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[8] See NYNEX Petition at 10.

[9] In the *Second Report and Order*, the Commission noted that the following examples of network changes would trigger the disclosure obligations:

> changes that affect: transmission; signalling standards; call routing; network configuration; logical elements; electronic interfaces; data elements; and transactions that support ordering, provisioning, maintenance and billing. (¶ 182)

The Commission stated that this list is not exhaustive, but rather is "exemplary" of the scope and nature of changes that must be disclosed. (¶ 182) Routine maintenance and provisioning activities such as those addressed by NYNEX are notably absent from the Commission's list, which encompasses only higher level system and service interface changes.

could be argued that a LEC would need to provide notice of such events as the purchase of a new fleet of trucks for outside plant maintenance crews (because the new fleet will be more reliable and thus network trouble may be cleared more quickly), personnel changes, and normal maintenance and plant enhancement activity. However, these types of "routine" activities do not directly affect the service interface or network interoperability and were never intended to be considered a network "change" subject to the disclosure rules.

A contrary interpretation could bring day-to-day network maintenance and provisioning to a halt, flooding both the Commission and the industry with needless paper work, and rendering customers incapable of obtaining the level of service they seek.[10]

B. The Need to Negotiate Nondisclosure Agreements Should Not Be Used to Delay the Public Benefit of Network Changes

The Commission's Rules permit LECs to implement certain network changes after a short public notice, but also provide for the automatic and indefinite tolling of the public notice period (and thus the effective date of the change) while the incumbent LEC and a new entrant negotiate the terms of a nondisclosure agreement.[11] The public notice period is tolled regardless of whether the proprietary interests at stake are those of the

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[10] The Commission could achieve this clarification by narrowing the definition of network change in § 51.325(a)(2). One way to do this is by adopting the definition proposed by USTA in its original comments. That definition closely mirrors the language of § 251(c)(5). See Southwestern Bell Petition at 15-16. Alternatively, the Commission could add language to § 51.325(d) clarifying that routine telephone company activities are not included within the scope of the rule. See NYNEX Petition at 9-10.

[11] 47 C.F.R. §§ 51.333 and 51.335

incumbent LEC or a third party. As NYNEX and Southwestern Bell point out, the Commission's Rule gives a new entrant virtually unbridled leverage to delay introduction of an incumbent LEC's change by simply refusing to agree to reasonable nondisclosure terms. [12]

The Commission should eliminate the automatic tolling requirement in its entirety, as suggested by Southwestern Bell. Alternatively, the Commission should modify its Rules, as NYNEX suggests, so that the disclosure period is automatically tolled for a maximum of 30 days. Ameritech submits that 30 days is sufficient time to permit parties to come to an accommodation with respect to the limited disclosure of confidential and proprietary information. At the same time, to the extent the Commission is concerned about discouraging inappropriate incumbent LEC behavior, a 30-day delay in the introduction of a new service offering is sufficient to create an incentive for the incumbent LEC to act reasonably.

In any event, if the party requesting the information believes that the incumbent LEC is imposing unreasonable conditions on nondisclosure, it would be free to ask the Commission to toll the notice period for an additional period of time. Furthermore, provided that the incumbent LEC agrees to the limited disclosure of proprietary information for interconnectivity purposes, the burden should be on the party seeking to extend the notice period to demonstrate the unreasonableness of the proposed nondisclosure agreement. Placing a limit on the amount of time the network disclosure period is

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[12] Southwestern Bell Petition at 18-19; NYNEX Petition at 10-11.

automatically tolled, however, is necessary to make it less likely that the process could be abused by a party whose only interest is in delaying the introduction of the change in the incumbent LEC's network.

C. The Commission Should Streamline Its Short-Term Notice Procedures to Prevent Unnecessary Delays in the Implementation of Network Changes

Ameritech agrees with Southwestern Bell that the Commission should simplify and streamline the short-term notice procedure governing implementation of network changes.[13] As a practical matter, an expedited process must be available for those cases in which a substantial lead time is not necessary for interconnecting carriers to accommodate the change and those cases in which a longer delay would only serve to disadvantage customers. The Commission's cumbersome short-term notice procedure, however, could easily delay implementation of network changes by two or three months.[14] Moreover, the process is susceptible to misuse by new entrants that simply want to delay the incumbent LEC's offering for no legitimate purpose.

Southwestern Bell proposes that short-term notifications be presumed to be *prima facie* reasonable, with the objecting party having the burden of proof to demonstrate that

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13 Southwestern Bell Petition at 17.

14 Under § 51.333 of the Commission's Rules, an interested party must file its objection to a short-term notice filing within 9 days of the Commission's public notice. The LEC must then respond within 14 business days. Thereafter, the Common Carrier Bureau will establish a reasonable public notice period before deciding whether implementation of the network change may proceed.

delay of the implementation process is warranted.[15] While this proposal has merit, an equally effective approach would be to simply reduce the minimum disclosure time to ninety days. This would still give interconnecting carriers time to adapt to an incumbent LEC's network change. In the rare instance where ninety days is not sufficient, an interconnecting party can request that the Commission extend the notice period (but in no event beyond six months).

D. In Order to Create a Seamless Network for Consumers, the Network Change Disclosure Requirements Should be Extended to All Telecommunications Carriers

Ameritech supports the requests of NYNEX and Southwestern Bell that the Commission impose on all telecommunications carriers network change disclosure obligations similar to those imposed on incumbent LECs.[16] The purpose of the network change disclosure requirement is to create a "seamless" system for the customer.[17] To this end, it makes sense to require new LECs, interexchange carriers ("IXCs") and other telecommunications carriers whose networks interconnect with incumbent LECs' networks to give similar notice of network changes that could affect the interoperability of their networks with incumbent LECs' networks.

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15 Southwestern Bell Petition at 16-18.

16 NYNEX Petition at 8-9; Southwestern Bell Petition at 15-16.

17 Section 251(c)(5) requires disclosure "of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."

The rationale for such a requirement is that timely network disclosure will avoid inconvenience to all customers. For example, if a new LEC is planning a network change that could affect all traffic that terminates on the new LEC's network, then it is in the interest of all carriers and their customers for the new LEC to give advance notice similar to that which the incumbent LEC would be required to give under similar circumstances. Likewise, the customers of an IXC wanting to call someone who is a new LEC customer would be inconvenienced if a call could not be completed because the new LEC failed to notify the IXC of an interoperability change -- just as a new LEC customer would be inconvenienced if the incumbent LEC failed to give a similar notification.

There is statutory authority for the Commission to impose such a requirement. Section 251(c)(5) is only one part of the overall regulatory structure that governs network interoperability. Section 256 involves interconnection and integration between networks, and the scope of the provision is not limited to incumbent LECs. In the context of this comprehensive regulatory scheme, the Commission should establish for all telecommunications carriers disclosure obligations parallel to those that apply to incumbent LECs.

IV. The Commission Should Allocate Number Administration Costs Based on Total Retail Telecommunications Revenues

Section 251(e)(2) requires that the Commission recover the costs of number administration on a competitively neutral basis from all telecommunications carriers. In the *Second Report and Order*, the Commission implemented the requirement of § 251(e)(2) by allocating those costs to telecommunications carriers based on their "gross

telecommunications revenues less payments to other telecommunications carriers." (¶ 343)

NYNEX, Southwestern Bell, USTA, and BellSouth ask the Commission to reconsider its decision to use net telecommunications revenues as the basis for this allocation.[18] As these petitioners correctly point out, the Commission's proposal results in a disproportionate amount of the costs being placed on facilities-based carriers and providers of wholesale services. Basing the allocation on total retail telecommunications revenues would avoid discriminating against facilities-based carriers, as NYNEX demonstrates.[19] Using total retail telecommunications revenues as the basis for the allocation would also alleviate the concern, expressed by the Commission in the *Second Report and Order* (¶ 343), that using unreduced gross revenues as the allocator would result in a double contribution by carrier-purchasers of wholesale telecommunications services. Because it is the method that most clearly satisfies the statutory requirement of competitive neutrality, the retail revenue methodology should be adopted.

V. Incumbent LECs Are Only Required to Provide Access to Their Directory Assistance Service and Subscriber Listings to Other Local Exchange Carriers

USTA asks the Commission to clarify that its Rules do not require that LECs transfer their directory assistance databases to a requesting carrier.[20] Ameritech agrees

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18 NYNEX Petition at 2-5; Southwestern Bell Petition at 19-20; USTA Petition at 5-6; BellSouth Petition at 7.

19 NYNEX Petition at 2-5.

20 USTA Petition at 2-4.

with USTA that such a result is neither desirable nor consistent with § 251(b)(3), but believes that the Commission's Rules do not require clarification. The Commission's Rules are very specific on what is required regarding directory assistance, and they clearly do not impose a database transfer requirement. LECs are required to place into their databases directory assistance listings of another LEC, and to provide nondiscriminatory directory assistance service to customers of another LEC.[21] In addition, LECs are required to make available to each other their directory assistance services "in their entirety, including access to any adjunct features,"[22] and to provide on-line access to "read the information in the LEC's directory assistance databases."[23] Further, the Commission's Rules require that LECs provide nondiscriminatory access to their subscriber directory listings.[24]

There is nothing in the Commission's Rules, however, that requires LECs to transfer their directory assistance databases to competitors. In fact, in the *Second Report*

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21 47 C.F.R. § 51.217(c)(3).

22 47 C.F.R. § 51.217(c)(3)(iv). In addition, under the Commission's Rules, a new LEC may also gain on-line access to an incumbent LEC's directory assistance database for the purpose of placing its listing or "to read such a database, so as to enable requesting carriers to provide . . . directory assistance concerning incumbent LEC customer information" as a network element. See 47 C.F.R. § 51.320(g); *First Report and Order* at ¶ 538. As discussed in detail on pages 10-13 of its Reply to petitions for reconsideration of the *First Report and Order* in this Docket, Ameritech does not agree that directory assistance is a network element because it is not a telecommunications service and it is already competitive.

23 47 C.F.R. § 51.217(c)(3)(ii).

24 47 C.F.R. § 51.217(c)(3)(ii).

and Order, the Commission specifically recognized that the non-discriminatory access requirement would be satisfied if a LEC allowed competitors to obtain read-only access to its directory assistance databases. (¶¶ 141, 153) If a competitor seeks more than that, it can obtain more robust access to databases as unbundled network elements under Section 251(c)(3). In short, the Rules do not contemplate requiring a LEC to provide its directory assistance databases in any other form under the non-discriminatory access provision of § 251(b).

In addition, the Commission is not authorized under that provision to require that LECs actually provide their directory assistance database to another carrier. Directory assistance is a local service that is provided as an adjunct to local exchange service and, as such, has historically been regulated by the states.[25] Therefore, except as it relates to the implementation of dialing parity pursuant to § 251(b)(3), the Commission does not have jurisdiction over directory assistance. Further, resolution of directory assistance issues is best left to state commissions since the issues are dependent upon local circumstances.

Moreover, there is no policy reason for the Commission to make a strained interpretation of the Act to justify such regulations. Directory assistance service is already competitive.[26] New LECs are free to provide their own service by purchasing the

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[25] The only exception is provision of directory assistance to interexchange carriers on an interstate basis, which is an access service regulated by the Commission.

[26] Ameritech demonstrated that directory assistance is competitive in pages (continued...)

database of an incumbent LEC,[27] or to obtain directory assistance services from competitors of the incumbent LEC.

CONCLUSION

The Commission should take action on each of the petitions for reconsideration as set forth above.

Respectfully submitted,

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[26](...continued)
12-13 of its Reply to petitions for reconsideration of the *First Report and Order* in this Docket.

[27] Directory assistance databases are already being sold by incumbent LECs at the local level. See USTA Petition at 3 and n. 7.

CERTIFICATE OF SERVICE

I, Trent M. Jones, hereby certify that on this 20th day of November, 1996, true and correct copies of the foregoing "Ameritech Comments On Petitions For Reconsideration" were served by hand delivery (*) or by first-class mail on the following parties:

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